

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

IRVIN STROM,

Licensee

NO. D 2001-92

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**HISTORY OF THE PROCEEDINGS**

Pursuant to notice duly given, an administrative hearing was held before Rebekah R. Ross, duly appointed administrative law judge, on April 1 through 4, 2002, at the Office of the Attorney General, 1019 Pacific Avenue, Tacoma, Washington.

The Office of the Insurance Commissioner (OIC) was represented by H. Lee Roussel, assistant attorney general, and Melanie C. DeLeon, assistant attorney general. Irvin Strom (the licensee) appeared pro se and represented himself.

On September 19, 2001, the OIC issued an Order Revoking License, revoking the licensee's license pursuant to RCW 48.17.530 and RCW 48.17.540(2). The order is discussed more fully below in the Findings of Fact, Section H. On October 3, 2001, the licensee timely requested an administrative hearing.

The parties were duly notified of the time and place of the proceedings. At the hearing on this matter, there were 98 exhibits admitted and testimony offered by ten witnesses. Closing arguments were submitted on April 25 and 26, 2002, and the hearing record then closed.

**FILED**  
JUN 25 2002  
Hearings Unit, C  
Patricia D. Petersen  
Chief Hearing Officer



The administrative law judge, having considered the evidence, now enters the following findings of fact:

### **FINDINGS OF FACT**

1. During the relevant times, Irvin Strom (the licensee) has been licensed as an insurance agent in the state of Washington. He has had contracts with various insurance companies, which pay him commissions for selling their products, which include annuities. Most of the licensee's income has come from his insurance business. The Order Revoking License addresses several sales of annuities to elderly clients, as discussed more fully below.

B. Transactions with Joyce LaBelle

2. The licensee arranged with a marketing company to mail mailers to seniors in the Tacoma area. [Exhibit C-1]. The text of the mailer stated:

**AARP REPORT: FINDINGS ON PROBATE  
REDUCE TAXES ON SOCIAL SECURITY INCOME!**

**A RECENT AARP REPORT FOUND, IN MANY CASES, THE OUTDATED  
PROBATE PROCESS CREATED UNREASONABLE LEGAL FEES ESTIMATED  
TO BE \$1.5 BILLION DOLLARS NATIONALLY EACH YEAR!**

Depending on the value of your estate, upon your death, probate costs and estate taxes could be a heavy burden for your heirs to pay.

There are now Federal tax laws passed that will legally enable you to reduce paying income taxes on interest income from your CD's, Money Market Funds and Social Security Income.

**For FREE HARD FACTS AND STRAIGHT ANSWERS ON HOW THIS CAN  
AFFECT YOU AND YOUR HEIRS, RETURN THIS POSTAGE-PAID CARD  
TODAY! THERE IS NO COST OR OBLIGATION.**



There was a place for the recipient to sign, provide his or her age, and telephone number. At the bottom in small font the card stated:

Not Affiliated With Any Government Agency or AARP

3. Joyce LaBelle, age 79, received one of these mailers. Although she and other witnesses thought the mailers might have been inserted in magazines, I find that it was a direct mailing, in light of the licensee's testimony that this was his procedure. Ms. LaBelle sent the mailer to the address provided, which was "NHIC", with an address in Washington, D.C. [Exhibit C-1].

4. The licensee's wife, Susan Strom, telephoned Ms. LaBelle, and identified herself as being with "Public Information Service". She set up an appointment for the licensee to visit Ms. LaBelle at her home. Although Ms. LaBelle could not recall who telephoned her, more probably than not it was Ms. Strom, as this was the Stroms' general procedure. Ms. LaBelle thought someone would come to discuss probate and taxes with her, and did not have annuities in mind when she set up the appointment. [LaBelle testimony].

5. On March 23, 2000, the licensee arrived at the home of Ms. LaBelle and showed her the "AARP Report" business reply card she had sent to "NHIC". She understood he was affiliated with AARP in some way, although the basis for this understanding appears to be only his showing the "AARP Report" card and the fact that he did not disavow any connection with AARP. Ms. LaBelle has a poor memory, and more likely than not her recollection that he also verbally asserted he was with AARP was not an accurate recollection. The licensee did not initially identify himself as being



an insurance agent. At some point he gave her a business card for the "Solomon Corporation", discussed more fully below in Section F of these findings.

6. The licensee told Ms. LaBelle that she needed to set up a living trust. [LaBelle testimony]. He gave her a form in which she listed the value of her assets, including her home, household goods, other real estate, jewelry, bank savings, mutual funds, annuities, life insurance, and money market funds. [Exhibit L-11]. The approximate value of her estate was listed as being \$1,215,500.

7. After creating a living trust for Ms. LaBelle, the licensee advised her that she needed to transfer her assets into the trust. In a subsequent visit he obtained more detailed information about Ms. LaBelle's annuities. The licensee advised Ms. LaBelle that she could improve her investment portfolio if she transferred some assets into annuities that he sold. In specific, he advised her to replace her annuity with Philadelphia Life Insurance Co., which had been issued on January 14, 1998, and charged decreasing surrender charges for the first nine years. [Exhibit C-4]. The licensee's sales presentation to Ms. LaBelle stressed the benefits of having an investment tied to the S&P index. He told her that the index was earning 12-16%. [LaBelle testimony].

8. The licensee had a contract with Great American Life Insurance Company, which sells an annuity product in Washington State called "Equilink I". The Equilink I product is an individual deferred annuity contract. The minimum interest is 3%. However, investors may receive interest indexed to S&P 500 on portion of the funds according to the "participation rate" designated by the company, but only if the funds



remain with the company the entire term of ten years. If funds are withdrawn prior to the end of ten years, or if the annuitant dies before the end of the term, then interest is limited to the 3% minimum. During the first 10-year term, there is a 10% load. The minimum 3% interest accrues only on the remaining 90% during the first term. The surrender value, accordingly, is only 90% of the premiums paid, plus interest at 3% until the end of the first term. The death benefit is the surrender amount, but will never be less than the purchase payment plus 3% interest on the entire purchase payment, minus withdrawals. [Exhibit C-3; C-8].

9. On April 20, 2000, the licensee completed an annuity application for Ms. LaBelle to replace her existing annuity with Philadelphia Life Insurance Co., worth around \$170,000, with an "Equilink I" annuity, Great American policy no. 7206063. [Exhibit C-5].

10. The licensee completed a replacement notice form, and gave the following answers to questions on the form:

1. Can there be reduced benefits or increased premiums in later years? *No*<sup>1</sup>.

2. Are there penalties, set up or surrender charges for the new policy? *Yes*. [E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
%	10	9	8	7	6	5	4	3	2	1

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No*.

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<sup>1</sup>This and some of the other answers were made by putting a check in a box.



\* \* \*

5. a) Are interest earnings a consideration in this replacement? *Yes.*  
b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *All premiums earn interest - No penalty fee. No setup charges. No mortality charges.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is now much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *N/A*.

e) The surrender charges are

yr	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
%	<i>10</i>	<i>9</i>	<i>8</i>	<i>7</i>	<i>6</i>	<i>5</i>	<i>4</i>	<i>3</i>	<i>2</i>	<i>1</i>

f) The death benefit is *Annuity cash value plus accrued interest minus withdrawals.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-5, at page 2; answers in italic font].

11. The licensee and Ms. LaBelle also signed a "Letter of Understanding" regarding the Equilink I policy, and Ms. LaBelle wrote her initials next to explanatory paragraphs, including paragraph 6, which provided:



The Surrender Value during the first term is equal to the following for each purchase payment: a) 90% of the purchase payment; less b) any amounts returned to you; plus c) interest earned at the guaranteed interest rate of 3%.

[Exhibit C-5, at page 3].

12. The licensee gave the wrong information in his answers to questions number 2 and 7(e) of the replacement notice form he completed for Ms. LaBelle. His information about the declining surrender charges was wrong, as the policy has a flat 10% surrender charge. Although the Letter of Understanding described the surrender penalty, the licensee either did not pay attention to this, or he did not understand this<sup>2</sup>. The licensee claims he has poor eyesight and difficulty in reading.

13. The licensee claims he did not understand all the terms and provisions of the Equilink I product. Most significantly, he did not understand about the flat 10% load. He thought that the surrender charges would decrease by 1% each year. The licensee claims he was verbally given information by Great American employees that applied to its "Equilink" policy, which is not available for sale in Washington state, and that this caused his confusion about the provisions of the Equilink I policy. The licensee has not presented any written information from Great American suggesting a declining surrender penalty, or identified any person whom he alleges gave him incorrect information about the Equilink I product he sold. During the investigation by the Office of Insurance Commissioner (OIC), and up until the last day of the hearing in this matter,

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<sup>2</sup>In his closing argument brief, the licensee attempted to argue that because premiums earned interest, in fact the surrender is technically declining. If that argument were accepted, it would be misleading to state both that premiums earned interest and that there were declining surrender charges.



the licensee did not concede that he had given erroneous information about the Equilink I surrender rates or allege that this was due to Great American supplying him with erroneous information. He testified that this was because he was trying to protect the insurance company. However, by not disclosing this defense prior to the last day of the hearing, Strom prevented the OIC from investigating with Great American what information it had given him about the Equilink I annuity product. I do not find the testimony of the licensee to be credible to the extent that he suggests he relied on erroneous information about the Equilink I annuity. In general, the licensee lacks credibility. For example, in his request for hearing he stated that he reviewed "all" the policies with his clients. He admitted at the hearing that this was not true, as not all the policies were available for review.

14. The licensee also gave incorrect information when he wrote in response to question no. 5: "All premiums earn interest". In fact, only 90% of the premiums earned interest for the first ten years. In contrast, the Philadelphia Life Insurance Co. annuity actually guaranteed 3% on the entire premium<sup>3</sup>. [Exhibit C-4, at 6].

15. The licensee also gave incorrect information when he answered "No" to question No. 3, regarding whether there would be surrender charges from Ms. LaBelle's existing Philadelphia Life Insurance Policy. Ms. LaBelle paid a surrender penalty of \$11,945.49 to Philadelphia Life Insurance Company when she removed \$177,665.43

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<sup>3</sup>In addition, after 10 years, if the S&P indexed interest rate applied, this would not be on 100% of the premium, but only based on the participation rate applicable to the contract.



from her Philadelphia Life Insurance annuity to purchase Equilink I, policy no. 07206063. [Exhibits L-3; C-4; C-12].

16. Ms. LaBelle signed a form authorizing the rollover of her Philadelphia Life Insurance Co. annuity into the Equilink I policy. [Exhibit C-5, at 5].

17. Ms. LaBelle also purchased a second Equilink I policy from the licensee. This was policy no. 07206128, purchased with \$46,304.14 that the licensee rolled over from Ms. LaBelle's annuity with Nationwide Life Insurance Company, which was issued on May 11, 1998. That annuity had contingent deferred sales charges if the policy was surrendered early. [Exhibit C-9, at 18]. Ms. LaBelle paid a penalty of \$1,671.48 when she removed the funds from her Nationwide policy to purchase the Equilink I policy. [Exhibit C-12].

18. On June 28, 2000, the licensee completed an application for Ms. LaBelle to replace her existing policy with Nationwide Life Insurance Co. with Great American "Equilink I" policy no. 7206128. [Exhibit C-39]. Again, the licensee completed a replacement notice form, and gave the following answers to questions on the form:

1. Can there be reduced benefits or increased premiums in later years? *No.*

2. Are there penalties, set up or surrender charges for the new policy? *Yes.*  
[E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	1	2	3	4	5	6	7	8	9	10
%	10	9	8	7	6	5	4	3	2	1

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No.*

\* \* \*



5. a) Are interest earnings a consideration in this replacement? Yes.  
 b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *All premiums earn interest - No policy fee. No setup charges. No mortality charge.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked. No mortality fee.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is how much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *[blank]*.

e) The surrender charges are

yr	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
%	<i>10</i>	<i>9</i>	<i>8</i>	<i>7</i>	<i>6</i>	<i>5</i>	<i>4</i>	<i>3</i>	<i>2</i>	<i>1</i>

f) The death benefit is *Annuity cash value plus accrued interest minus withdrawals.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-39, at page 2; answers in italic font]. Again, the answers given to questions number 2, 3, 5, and 7(e) were incorrect.

19. Ms. LaBelle authorized the rollover of her funds in her Nationwide annuity to the Equilink I product. [C-39, at 5].



20. The licensee also sold Ms. LaBelle a policy with American National Insurance Company on April 26, 2000. The purchase price was \$41,593.66. Ms. LaBelle used her funds from her Alger money market account to make this purchase. [Exhibit C-6].

21. On October 23, 2000, Ms. LaBelle wrote to Great American and to American National Life that she had recently purchased annuities from their companies. She sought full refund of her money. She stated that the licensee had not explained how the surrender charges work, and that she now sees she cannot withdraw funds without paying a substantial penalty. [Exhibit C-11; C-78].

22. Ms. LaBelle also prepared a complaint to the Office of Insurance Commissioner, with the assistance of insurance agents John B. Wilson and Mark Wasemiller. She stated in this complaint that the licensee made statements to her that led her to believe he was affiliated with the AARP. [Exhibit C-12, at page 2]. She claimed that she had told the licensee that she would need to access \$100,000 in order to build a house with her daughter. [Exhibit C-12, at page 2].

23. On December 29, 2000, Ms. LaBelle wrote to the Office of Insurance Commissioner's investigator, Victor Overholt, stating that she had not realized that she would incur significant penalties from early withdrawal of funds in the annuities sold by the licensee, and that she had purchased the annuities based on the licensee's representations that she could earn interest or dividends of 12% to 16%, compared to the 4.7% to 5 ½ % she had been earning. [Exhibit 40].

24. Great American initially denied Ms. LaBelle's request for a full refund on November 9, 2000. [C-80]. However, on January 29, 2001, Great American advised



Mr. Overholt that after reviewing the additional information provided it determined to refund her premiums in exchange for a release of claims. [Exhibit L-18]. Ms. LaBelle chose to accept the refund in exchange for a release of claims. [Exhibit L-73].

25. American National also initially denied Ms. LaBelle's request for full refund on November 6, 2000. [Exhibit C-81]. However, on February 16, 2001, American National refunded \$38,389.38 to Ms. LaBelle and waived surrender charges in exchange for her releasing any claims against American National. [Exhibit L-15].

26. Although Great American and American National waived surrender fees, Ms. LaBelle still incurred the surrender fees from the early withdrawal from her prior annuities.

27. On February 8, 2001, Ms. LaBelle transferred the funds from her Equilink I policy no. 07206063 to a policy with Lincoln Benefit Life Co. [Exhibit L-70]. The broker was John B. Wilson, the same broker who had assisted Ms. LaBelle in preparing her complaint against the licensee. On February 8, 2001, Ms. LaBelle transferred her funds from her Equilink I policy no. 07206128 to a GE Life and Annuity Assurance Company policy, again through John B. Wilson as broker. [Exhibit L-71 - L-72].

28. Because Ms. LaBelle has a poor memory and little understanding of her finances and investments, I do not give weight to her statements that the annuity purchases left her with insufficient assets to purchase a home with her family. Because Ms. LaBelle used the surrendered Equilink I annuities to purchase other annuities, and because of the other assets Ms. LaBelle disclosed on her list of assets provided to the licensee, it does not appear that Ms. LaBelle actually had as a priority placing assets in



a place they would be liquid. Her priority appears to be the 12-16% allegedly available with the annuities.

29. It is noted and acknowledged that Ms. LaBelle could have learned through further investigation and/or from the notices she received after making the decision to purchase annuities through the licensee, that the representations made by the licensee were inaccurate about the surrender charges (or lack thereof) and other provisions of the Equilink I annuity. In addition, the policies could be canceled within the first 20 days (although this would not eliminate the surrender penalties from the prior policies). Ms. LaBelle has a poor understanding of finances and investments, and a tendency to rely on information given by people she trusts. This is also the case with other clients of the licensee discussed below.

B. Transaction with Bonnie Eberle

30. Dan and Bonnie Eberle owned a single premium (\$4,079.91) deferred annuity with Safeco Life Insurance Company, issued on October 27, 1993. [Exhibit C-13]. Dan Eberle was listed as the annuitant. When Dan Eberle died, Bonnie, born in 1932 and thus 68 years old in 2000, became the owner. One of the endorsements on that policy was that if the owner were confined to a hospital or nursing care facility for 30 days there would be no penalty for early withdrawal. [Exhibit C-13].

31. On October 16, 2000, the licensee completed an application for Ms. Eberle to replace her Safeco annuity with an "Equilink I" annuity, Great American policy no. 7206257. [Exhibit C-15].



32. The licensee completed a replacement notice form for Ms. Eberle, and gave the following answers to questions on the form:

1. Can there be reduced benefits or increased premiums in later years? *No.*
2. Are there penalties, set up or surrender charges for the new policy? *Yes.*  
[E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
%	10	9	8	7	6	5	4	3	2	1

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No.*

\* \* \*

5. a) Are interest earnings a consideration in this replacement? *Yes.*  
b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *All premium earns interest - No policy fee. No setup charges. No mortality charges.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is how much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *[blank]*.

e) The surrender charges are



yr	1	2	3	4	5	6	7	8	9	10
%	10	9	8	7	6	5	4	3	2	1

f) The death benefit is *Annuity cash value plus accrued interest minus withdrawals.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-15, at page 2; answers in italic font]. Again, the answers given to questions numbers 2, 3, 5, and 7(e) were incorrect. If the fact that the Equilink I annuity does not have a nursing home/hospital endorsement is deemed "materially adverse", then the answer to question number 8 was also incorrect.

33. The licensee and Ms. Eberle also signed a "Letter of Understanding" regarding the Equilink I policy. Ms. Eberle did not initial any of the paragraphs of the letter of understanding in the places provided. [Exhibit C-15, page 3-4].

34. Ms. Eberle signed a rollover request form, requesting that her Safeco annuity be rolled into the Equilink I product. [Exhibit C-15, page 5]. She was issued Equilink I policy no. 07206257. [Exhibit C-14].

#### C. Transactions with Joe and Clara Moser

35. The licensee sent a mailer to Clara Moser, age 84, which contained the same text as the card sent to Ms. LaBelle. However, the entire text, including the statement about not being affiliated with any government agency or AARP, was in the same size font. [Exhibit L-24, at page 2]. At some point, Ms. Moser called AARP, and learned that the licensee did not represent AARP.



36. Ms. Moser returned the mailer, listing herself and her husband, Joe Moser. The licensee, again through his wife, set up an appointment at the Mosers' home for August 2, 2000. [Exhibit L-24, at page 2]. The licensee appeared and presented the "AARP Report" mailer. He did not have a business card. [Moser testimony].

According to Ms. Moser, he talked the Mosers into purchasing a living trust. [Moser testimony]. According to the licensee, as a paralegal he could not have given them advice. He simply described their options and the benefits of a living trust, and they chose to purchase a living trust. [I. Strom testimony]. He did not tell Ms. Moser that he was an insurance agent. [Moser testimony].

37. In connection with transferring assets to the living trust, the licensee learned that the Mosers had annuities. He told them they could get up to 16% interest on an annuity he could sell them. [Moser testimony].

38. On the same day, August 2, 2000, the licensee prepared an annuity application and a replacement notice form for Joe Moser, age 87, to replace his Safeco annuity with Equilink I, Great American policy no. 7206159. The licensee gave the following answers to questions on the replacement form:

1. Can there be reduced benefits or increased premiums in later years? *No.*
2. Are there penalties, set up or surrender charges for the new policy? *Yes.* [E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	1	2	3	4	5	6	7	8	9	10
%	10	9	8	7	6	5	4	3	2	1

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No.*



\* \* \*

5. a) Are interest earnings a consideration in this replacement? *Yes.*  
b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *No answer provided.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is how much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *[blank]*.

e) The surrender charges are

yr	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
%	10	9	8	7	6	5	4	3	2	1

f) The death benefit is *No answer provided.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-19, at page 2; answers in italic font]. Again, the answers to questions number 2 and 7(e) were incorrect. No answer was given to question no. 5(b) about explaining the interest, and apparently no surrender penalties applied to Mr. Moser's existing Safeco annuity.



39. The licensee and Mr. Moser also signed a "Letter of Understanding" regarding the Equilink I policy. Mr. Moser did not initial any of the paragraphs of the letter of understanding in the places provided. [Exhibit C-19, page 3-4].

40. Mr. Moser signed a rollover request form, requesting that his Safeco annuity be rolled into the Equilink I product, policy number 7206159. [Exhibit C-19, page 5]. The purchase payment was \$66,010.93. [Exhibit C-41].

41. On August 25, 2000, the licensee prepared a second annuity application form for Mr. Moser for an Equilink I annuity in the amount of \$85,000, policy number 07206204. [Exhibit C-20]. The source of the funds for that annuity was Mr. Moser's account with Frontier Bank. On October 19, 2000, the licensee prepared a third annuity application form for Mr. Moser for an Equilink I product in the amount of "\$32,000+", policy number 07206269. [Exhibit C-21]. The source of the funds for that annuity was Mr. Moser's account with Washington Mutual Financial Services. Because those Equilink I annuities did not replace other annuities, no replacement forms were required.

42. On August 25, 2000, the licensee also prepared an annuity application for Clara A. Moser, for an Equilink I product in the amount of \$12,000, policy number 07206197. [Exhibit C-24; C-90]. The licensee and Ms. Moser signed a "Letter of Understanding" regarding the Equilink I policy. Ms. Moser did not initial any of the paragraphs of the letter of understanding in the places provided. [Exhibit C-24, page 2-3]. The source of the funds for that annuity was Ms. Moser's CD with Frontier Bank,



which matured on September 11, 2000. Again, because the Equilink I annuity did not replace an annuity, no replacement form was required.

43. The licensee also started the procedures to sell the Mosers a fourth annuity, which was to be funded from their account with Washington Mutual Bank. A bank employee, Steven Carpmail, was concerned about this transfer, and discussed it with the Mosers. The Mosers stopped the check that would have funded the fourth Equilink annuity. Mr. Carpmail prepared and the Mosers signed a document directing that the licensee was to have no further contact with them.

44. The licensee did not want the Mosers to cancel the other annuities he sold them. His wife, Susan Strom, called the Mosers and told them she was investigating their complaint to Great American. She then went to the Moser home, and posed as an investigator for Great American. She identified herself only as "Susan" and, because she had detailed information about the Mosers' policies with Great American, the Mosers did not doubt she was an investigator for Great American. Ms. Moser shared detailed financial information with Ms. Strom. After spending significant time discussing their investments and annuities with the Mosers, Ms. Strom presented the Mosers with a typed letter with their address and the address of Great American Life Insurance Co. on the top. The letter stated:

Upon further consideration, we wish to affect the following change to the letter written by bank employee Steven Carpmail, with regard to our annuities with your company:

Policy #07206159 Annuitant: Joe Moser I wish to keep the policy \_\_\_\_  
Please change the ownership of the policy to: Joe Moser and Clara Moser, Joint Owners, as requested in the application.



Policy #07206204 Annuitant: Joe Moser I wish to keep the policy \_\_\_\_

Policy #07206197 Annuitant: Clara Moser I wish to keep the policy \_\_\_\_

None of our funds are to be sent to Steven Carpmail at WM Financial . . .

After discussions with "the investigator", Ms. Strom, the Mosers checked each of the boxes and signed their names. [Exhibit C-22]. They felt they had no choice, as "the investigator" told them it was too late to cancel the policies without paying a 10% surrender charge. Thus, the Mosers' Equilink I policies were not canceled.

45. The tactic of gaining access to the Moser home under false pretenses is one of the most telling examples of the Stroms' use of deceptive tactics in connection with the sale of insurance products. Ms. Strom did not advise Ms. Moser she was married to the person from whom Ms. Moser had specifically stated in writing she wanted no contact. The reason she did not do so is obvious. Had she been truthful, Ms. Moser would not have let her in her house and would not have candidly discussed her investments and annuities with her. The Stroms believe this deceptive contact was sanctioned by an employee of Great American. Whether a third party was part of this deceptive scheme is immaterial to the issues presented here. What is material is that the Stroms intended to deceive, and did deceive a vulnerable elderly client.

46. When Ms. Moser testified at the hearing, she did not recognize Ms. Strom as the "investigator." The Stroms did not reveal their deception until Ms. Moser had been excused as a witness. Again, the reason is obvious. Ms. Moser would certainly have been upset that her trust had been violated. The licensee argues that the fact that his ruse was not discovered reflects poorly on Ms. Moser as a witness. In fact, this ruse



simply shows that the Stroms are aware of, and take advantage of, the credulity of some elderly people.

D. Transactions with Lloyd and Irene Nordstrom

47. The licensee sent a mailer similar to the mailer he sent to Clara Moser to Lloyd Nordstrom, age 76. [Exhibit L-24]. Mr. Nordstrom's wife, Irene Nordstrom, is 77. An appointment was scheduled for July 13, 2000. [Exhibit L-24]. When the licensee showed the "AARP Report" card, Mr. Nordstrom thought the licensee represented the AARP. He later called the AARP and found this was not the case. [Nordstrom testimony].

48. After setting up a living trust for the Nordstroms, the licensee discussed with the Nordstroms how to transfer assets to the living trust. He learned about their assets, including their variable annuities. He told the Nordstroms that with those annuities they were 100% at risk. He asked them how they felt about being 100% at risk. They responded they did not like it<sup>4</sup>. The licensee then told them he was an insurance agent, and described the Equilink I product he sold. [I. Strom testimony].

49. Ms. Nordstrom had an annuity with Traveler's Life, issued on July 20, 1999. [Exhibit C-25]. It had deferred sales charges that declined yearly. [Exhibit C-25, at 6].

50. On August 3, 2000, the licensee completed an annuity application for Ms. Nordstrom to purchase an Equilink I annuity, policy no. 7206171, with \$43,679.50 in

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<sup>4</sup>In fact, had the Nordstroms kept their money in the variable annuities, the value would have gone down when the stock market declined. Whether it would have remained down would presumably depend on how long they kept their annuities and further activities of their investment portfolio.



funds rolled over from her Traveler's Life annuity. [Exhibits C-26 and C-27]. He gave the following answers to questions on the replacement form:

1. Can there be reduced benefits or increased premiums in later years? *No.*
2. Are there penalties, set up or surrender charges for the new policy? *Yes.*  
[E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	1	2	3	4	5	6	7	8	9	10
%	10	9	8	7	6	5	4	3	2	1

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No.*

\* \* \*

5. a) Are interest earnings a consideration in this replacement? *Yes.*  
b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *All premium earns interest - no policy fee, no setup charges, no mortality charges.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is how much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *N/A*.

e) The surrender charges are



yr	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
%	10	9	8	7	6	5	4	3	2	1

f) The death benefit is *Annuity cash value plus accrued interest, minus withdrawals.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-27, at page 2; answers in italic font]. The answers to questions number 2, 3, and 7(e) were incorrect, as the Equilink I policy did not have the declining surrender charges described and the Traveler's Life annuity did charge a deferred sales charge for early withdrawal.

51. Lloyd and Irene Nordstrom also owned an annuity with Equitable Life Insurance Co. of Iowa, issued on December 1, 1997. [Exhibit C-29A]. That annuity charged withdrawal charges that decreased every year until the eighth year. [Exhibit C-29, at 3]. It waived penalties for early withdrawal if the annuitant were hospitalized. [Exhibit C-29, at 13]

52. On August 3, 2000, the licensee completed a second annuity application for Mr. Nordstrom to purchase an Equilink I policy, No 7200172, with "\$92,000+" rolled over from the Equitable Life Insurance Co. of Iowa annuity. [Exhibit C-35]. He gave the following answers to questions on the replacement form:

1. Can there be reduced benefits or increased premiums in later years? *No.*

2. Are there penalties, set up or surrender charges for the new policy? *Yes.*  
[E]xplain, emphasizing any extra cost for early withdrawal: *No set up fees - surrender charges as follows:*

yr	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
%	10	9	8	7	6	5	4	3	2	1



3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? *No.*

\* \* \*

5. a) Are interest earnings a consideration in this replacement? *Yes.*

b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction or earnings that may result from set up charges, policy fees, and other factors. *All premium earns interest - no policy fee, no setup charges, no mortality charges.*

\* \* \*

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:

a) Are the interest rates quoted above before or after fees and mortality charges have been deducted? *"After" box checked.*

b) Interest rates are guaranteed for how long? *Life certificate minimum guarantee only.*

c) The minimum interest rate to be paid is how much? *3%*

d) If applicable, the rate you pay to borrow is *N/A* and the limit on the amount that can be borrowed is *N/A*.

e) The surrender charges are

yr	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
%	<i>10</i>	<i>9</i>	<i>8</i>	<i>7</i>	<i>6</i>	<i>5</i>	<i>4</i>	<i>3</i>	<i>2</i>	<i>1</i>

f) The death benefit is *Annuity cash value plus accrued interest, minus withdrawal.*

8) Are there other short or long term effects from the replacement that might be materially adverse? *No.*

[Exhibit C-35, at page 2; answers in italic font]. Again, the answers to questions number 2, 3, 5, and 7(e) were incorrect, as the Equilink I policy did not have the



declining surrender charges described and the Equitable Life Insurance annuity did charge a deferred sales charge for early withdrawal, and not all premiums earned interest. If the fact that the Equilink I annuity does not have a waiver of penalty for early withdrawal is deemed "materially adverse", then the answer to question number 8 was also incorrect.

E. Transactions with Robert and Norma Wilson

53. The licensee sent a mailer similar to the mailer he sent to Clara Moser and Lloyd Nordstrom to Norma Wilson, age 67. [Exhibit L-24, at page 2]. Ms. Wilson returned the mailer, and the licensee, through his wife, set up an appointment at Ms. Wilson's home.

54. The licensee gave Ms. Wilson his Solomon Corp. business card when she asked for his card, but she is not sure if this was on his first visit.

55. After the licensee told Ms. Wilson about 16% interest from his annuity product, Ms. Wilson applied for and purchased an Equilink I policy, policy no. 07206210, from the licensee, in the amount of \$39,264.62, using funds from her account at Alliance Capital. [Exhibits C-17; C-84]. The licensee orally advised Ms. Wilson that the Equilink I annuity had declining surrender charges. [Wilson testimony]. After receiving the Equilink I policy, Ms. Wilson questioned the licensee about the flat 10% surrender charge, and he said he would look into it. He never got back to her. Ms. Wilson canceled within the first 20 days, and accordingly did not incur surrender charges from Great American. However, she lost more than \$600 in penalties from the investment she took her money from. [Wilson testimony].



F. History of the Licensee's Insurance License

56. On May 11, 1990, the OIC, through Deputy Insurance Commissioner William Kay Kirby, entered Findings of Fact, Conclusions of Law, and Order on Hearing (order), in Docket No. D 90-15. That order was not appealed, and included the following

Findings of Fact:

2. Prior to October 6, 1988, the licensee was licensed as an insurance agent in the state of Washington. On that date, his license expired . . .

3. During the period October 6, 1988 to December 13, 1988, the licensee did transact insurance business. He was not licensed as an insurance agent in the state of Washington during this time.

\* \* \*

22. b. [In a conversation with a clerk at the Office of the Anacortes Police Department in order to obtain a license to do business] the licensee did tell her that CARP [Christian Association of Retired People] was a "Christian non-profit organization;"

c. The licensee told her that he was not in the business of selling anything to the seniors he visited; he claimed that he only explained their rights to them, regarding Medicare and/or Medicaid. This is consistent with what the licensee wrote about "helping senior citizens" on the exhibit shown in Exhibit 4;

d. The licensee well knew that this was a lie, because CARP and the licensee himself were then involved in a mass sales campaign to sell various insurance products to large numbers of senior citizens.

\* \* \*

f. The false statements made by the licensee . . . are consistent with the modus operandi generally alleged against the licensee by the Insurance Commissioner, namely that the licensee, acting either alone or through his wife, misrepresented himself and his purpose to some senior citizens, in order to get access to their homes and sell them insurance products. . . .

\* \* \*



43. In his testimony, the licensee said that he was at all times aware that the Washington Administrative Code require an insurance agent to identify himself or herself as an insurance agent at the outset of a sales presentation. The Hearing Officer specifically finds that in some instances, the licensee did not do this.

[Exhibit C-36, at pages 2-24]. The order concluded as follows:

The evidence in this case establishes by a clear preponderance that the licensee, Irvin N. Strom, committed multiple violations of RCW 48.30.040 in connection with his solicitation of insurance business from senior citizens in this state. He is untrustworthy and a source of injury and loss to the citizens of this state. He lacks the qualifications necessary to be a licensed insurance agent.

At the time of these violations, the licensee was a seasoned, experienced insurance agent. He had been entrusted with the training of less experienced agents. Before becoming involved with CARP, he had displayed a high level of professional ethics. The licensee cannot claim inexperience as a mitigating factor.

A factor in aggravation of the violations of RCW 48.30.040 is that the licensee's sales activities after joining CARP were directed predominantly or exclusively at senior citizens. Unfortunately, many senior citizens are more vulnerable than [one of the licensee's witnesses] to misrepresentations and dishonest sales techniques. The Office of Insurance Commissioner has a duty to be particularly vigilant in protecting such senior citizens.

The evidence establishes by a clear preponderance that the licensee transacted insurance business while he was not licensed, in violation of RCW 48.17.066. By itself, this might require no more than a fine and perhaps a suspension. However, the evidence of multiple violations of RCW 48.30.430 proves moral turpitude, not a merely technical violation.

The order in Docket No. D 90-15 revoked the licensee's insurance license. [Exhibit C-36, at pages 23-34].

57. The license was reinstated, as discussed below. In April 2001, the licensee told his managing general agent, Jeff Smith, that his license had previously been revoked only for a technical violation, his inadvertent failure to pay \$3 of his appointment fee on time. As the managing general agent, Jeff Smith was required to



explain any license revocations in forms relating to the licensee's receiving appointments to sell insurance. The licensee's statement to Jeff Smith that his license was revoked simply for a minor technical violation of failing to pay \$3 was a deliberate falsehood made for the purpose of selling insurance.

58. The licensee wrote to the OIC on April 29, 1993, asking to be considered for an insurance licensee. He stated that he had learned through the revocation process:

1) Never to agree to represent any agency, association, or company without checking personally with the Office of Insurance Commissioner.

2) Always have "Insurance Agent, and Insurance Company" printed on any business card I use.

\* \* \*

5) Always identify myself as an insurance agent to each and every prospective client, both in person and over the telephone.

[Exhibit C-37]. Despite this representation to obtain a new license, the licensee did not write "Insurance Agent, and Insurance Company" on the business cards he used. The card actually uses the term "General Ins. Agent", buried amongst several other services of "Solomon Corporation". The word "insurance" is not spelled out. No insurance company is listed on the card. His wife, who set up the appointments for him by telephone, did not identify him as an insurance agent prior to the meeting. Only after obtaining information from and giving information to prospective clients did he advise them he could sell insurance products.



59. The licensee signed a stipulation on September 17, 1993, in connection with his reapplication for a license as an insurance agent. The stipulation provided in relevant part:

1. I will conduct my business under my license in strict conformity with the requirements of the insurance code and rules issued thereunder.

\* \* \*

4. I understand that WAC 284-12-110 requires an insurance agent to inform a prospective purchaser, prior to commencing a sales presentation, that the agent is acting as an insurance agent, and must inform the prospective purchaser of the full name of the insurance company whose product the agent offers to the buyer.

5. I understand that if I transact insurance business in a name other than my own, I must be properly licensed with respect to any such name.

\* \* \*

10. I understand that my license may be revoked pursuant to the applicable provisions of the Insurance Code for a single violation of statute or rule.

11. I agree to respond promptly to any inquiry of the commissioner and to cooperate fully in explaining any insurance transaction in which I am involved.

12. I have represented that I will not engage in the sale of living trusts while I am licensed as an insurance agent. In the event I decide that I will engage in such sales, at least 30 days before beginning their solicitation, I will give written notice of my decision and intention to act with respect to the sale of living trusts to the Chief Investigator . . . of the Insurance Commissioner.

[Exhibit C-38].

G. Use of Living Trusts and "Solomon Corporation" to Sell Insurance.

60. The practices employed by the licensee and his wife reveal a deliberate effort to create misleading impressions about "Solomon Corp." which is owned by and employs only the licensee and his wife. Potential elderly clients receive mailers



mentioning an AARP report from an address in Washington, D.C., and upon returning those mailers seeking information, they receive telephone calls from the "Public Information Service". These calls are simply calls from Susan Strom to set up appointments for the licensee to gain access to the potential clients' homes, ostensibly to give information about federal tax laws, estate planning, and living trusts. If the licensee shows a business card, it is the card that states as follows:

THE SOLOMON CORPORATION

- |                         |                      |
|-------------------------|----------------------|
| • Real Estate Broker    | • Commercial Loans   |
| • Securities/NASD       | • Financial Planning |
| • General Ins. Agent    | • Estate Planning    |
| • Paralegal             | • MTG. Loan Officer  |
| • Notary Public         | • Note Broker        |
| • Living Trusts / Wills |                      |

[Exhibit C-2]. It states in very small font in the lower corner: "Designated Broker - Irv Strom". Clients understandably obtain the impression that the licensee is only one employee of a significant corporation that provides a litany of services.

61. On November 30, 1993, the licensee apparently advised the OIC he was accepting a position with a company that markets living trusts. [Exhibit C-46]. On January 14, 1994, OIC Chief Deputy Mark M. McDermott wrote to the licensee advising him:

As you should know, unprofessional insurance agents have done great harm to some consumers by selling them unneeded living trust packages and followed up by exhausting their assets to "fund" the trust with annuities or life insurance.



[Exhibit C-46, at 5]. The OIC advised the licensee it would monitor his activities, and was concerned about his past activities and misrepresentations, such as that he represented SIMCO, which was not true. [Exhibit C-46, at 6].

H. Order Revoking License

62. On September 19, 2001, the OIC issued an Order Revoking License. The order alleged violations of Revised Code of Washington (RCW) 48.30.040, false information and advertising, and Washington Administrative Code (WAC) 284-12-110, identification of agent or solicitor to prospective insured, in connection with the licensee's transactions with Joyce LaBelle, Clara and Joe Moser, Lloyd and Irene Nordstrom, and Robert and Norma Wilson. It alleged violations of RCW 48.30.080, defamation of insured, and RCW 48.30.180, twisting, in connection with the transactions with Ms. LaBelle, the Nordstroms, Reiko Massey, and Bonnie Eberle. It alleged violations of WAC 284-23-440(2)(a) and (c), alleging that the licensee had failed to complete replacement forms correctly in connection with the transactions with Ms. LaBelle, the Nordstroms, Mr. Moser, and Reiko Massey. It alleged violations of WAC 284-23-440(1)(a) and (b) and (2)(a), (b), (c) and (d), alleging that the licensee had failed to complete a replacement form for Ms. Nelson. It alleged violations of RCW 48.30.210, misrepresentation in application for insurance, RCW 48.30.090, misrepresentation of policies, and WAC 284-23-440 in connection with the transactions with Ms. LaBelle, Ms. Massey, the Nordstroms, and to the insurance companies whose applications he completed. The order stated that the licensee has shown himself to be untrustworthy and a source of injury and loss to the public and not qualified to be an



insurance agent in the state of Washington. It revoked his license pursuant to RCW 48.17.530(1)(h).

63. Although the order referenced transactions with Clara Nelson and Reiko Massey, no evidence was offered or admitted regarding those clients, other than a mailer sent to Ms. Nelson similar to the mailers sent to Ms. Wilson, Ms. Nordstrom, and Ms. Moser. [Exhibit L-24].

64. This decision makes no findings regarding the licensee's transactions with Vernon Brazeau, because those transactions were not a basis of the order at issue, and the OIC did not amend the order to include transactions involving Mr. Brazeau. Although the OIC argues that the transactions with Mr. Brazeau demonstrate a pattern and practice on the part of the licensee, the undersigned deems the evidence of the other violations sufficiently establish his patterns and practices relating to the violations at issue. Any findings regarding transactions involving Mr. Brazeau could risk confusing the factual bases of the conclusions of this decision.

65. This decision also makes no findings regarding the licensee's complaints regarding the alleged overzealousness, mistakes, or misrepresentations of the OIC investigator, or alleged bad motives of his competitors who assisted in Ms. LaBelle's complaint. Although the licensee might feel wronged, the sole issues in this case are the licensee's violations of the insurance laws, and whether those violations warrant license revocation.

66. The licensee believes that the OIC created animus against him by making statements to his clients he contends are untrue. Even if that were the case, the record



amply shows that the licensee made misrepresentations to his clients. Little purpose would be served at this point in attempting to explore the source of the anger and disappointment expressed by the licensee's clients.

### CONCLUSIONS OF LAW

1. The undersigned has jurisdiction over these proceedings pursuant to Revised Code of Washington (RCW) 48.04.010.

2. RCW 48.17.530(1) allows the Insurance Commissioner to suspend or revoke an insurance agent's license under the following circumstances:

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision of this code or any proper order or regulation of the commissioner.

\* \* \*

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has been guilty of "twisting," as defined in RCW 48.30.180 . . .

\* \* \*

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

3. The statutes and regulations at issue do not specify the burden of proof on the OIC in this proceeding. In *Nguyen v. State*, 144 Wn.2d 516, 29 P.3d 689 (2001), the Washington Supreme Court applied the "clear and convincing" burden of proof in a proceeding involving the revocation of a license to practice medicine. In *Eidson v.*



*Department of Licensing*, the Washington Court of Appeals, Division I, distinguished *Nguyen* and applied the "preponderance of the evidence" burden of proof in a proceeding involving the revocation of a real estate appraiser license. In a prior license revocation proceeding involving the licensee, the presiding officer applied the "clear and convincing" burden of proof.

4. As discussed more fully below, the Office of the Insurance Commissioner (OIC) has met its burden of proof under both the "clear and convincing" and the "preponderance of the evidence" standards. Accordingly, this decision will apply the "clear and convincing" standard, and makes no conclusion about which is the appropriate burden of proof in this case.

A. Deception

5. RCW 48.30.040 provides:

**False information and advertising.**

No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

WAC 284-12-110 provides:

**Identification of agent or solicitor to prospective insured.** It shall be an unfair practice for an agent or solicitor initiating a sales presentation away from his or her office to fail to inform the prospective purchaser, prior to commencing the sales presentation, that the agent or solicitor is acting as an insurance agent or solicitor, and to fail thereafter to inform the prospective purchaser of the full name of the insurance company whose product the agent or solicitor offers to the buyer. This rule shall apply to all lines of insurance and to all coverage solicited in this state including coverage under a group policy delivered in another state, whether or not membership in the group is also being solicited.



6. The licensee initially made contact with Joyce LaBelle, Clara and Joe Moser, Lloyd and Irene Nordstrom, and Robert and Norma Wilson through mailers quoting from an AARP report. However, in either very small font or in normal font, the licensee stated on the same flier that he was not affiliated with any government agency or AARP. There is no credible evidence that the licensee ever orally told a potential client he was affiliated with AARP, although he allowed them to retain that impression. Although he used the AARP name to catch the attention of elderly people who might trust information from the AARP, the licensee's use of that name was not, in itself, deceptive. If the licensee were attempting simply to sell living trusts, it was appropriate for him to advise his potential clients that a creditable organization, the AARP, deemed living trusts to be a good idea (if that is, in fact, true).

7. However, the issue here is the licensee's sale of insurance products. The licensee's entire scheme in the way he initiates these sales was deceptive. He was using the sale of living trusts to literally get in the doors of his elderly potential clients in order to sell insurance products, without first advising them he was an insurance agent. It is difficult to imagine any conduct that is more blatantly in violation of the letter and spirit of WAC 284-12-110.

8. The licensee's habit and practice is first to simply discuss with clients establishment of living trusts. In this context, he learns about their assets. He then discusses the need for the clients to transfer all their assets into the title of the living trust. He then suggests to clients that their assets should be altered. His card lists that Solomon Corporation does financial planning, estate planning, mortgage loans,



securities, and real estate brokerage, and so transfer of many types of assets could conceivably generate fees or commissions for the licensee. The only type of asset material to this case is insurance contracts.

9. It is undisputed that after the licensee entered the homes of potential clients using materials that did not mention his role as an insurance agent, he obtained the confidence of clients, and ultimately learned of their assets, and used this information to start his sales pitch for insurance policies. These acts were deceptive, and violated RCW 48.30.040 and WAC 284-12-110.

10. The licensee's argument that he kept his living trust business and his insurance business separate is rejected. The evidence amply supports the conclusion that when the licensee entered his clients' homes, he was alert to the possibility of making an insurance sale or sales. This is what he did, and insurance sales were the main source of his income.

C. Misrepresentations in Replacement Forms and Twisting

11. WAC 284-23-440(2)(a) provides:

(2) Where a replacement is involved, the agent or broker shall:

(a) Present to the applicant, not later than at the time of taking the application, a completed notice regarding replacement in the form as described in WAC 284-23-485, or other substantially similar form approved by the commissioner. Answers must be succinct and in simple nontechnical language. They should fairly and adequately highlight the points raised by the questions, without overwhelming the applicant with verbiage and data. An answer may include a reference to the contract or another source, but it must be essentially complete without the reference. The notice (and a copy) shall be signed by the applicant after it has been completed and signed by the agent or broker and the signed original shall be left with the applicant.



12. In the replacement forms he completed for Joyce LaBelle, Bonnie Eberle, Clara and Joe Moser, and Lloyd and Irene Nordstrom, the licensee filled out several of the answers incorrectly. The incorrect answers related to material issues involving surrender penalties for both the prior annuities and the Equilink I annuity. They were incorrect in stating, without qualification, that there would be interest on the entire premium. On at least two policies, the licensee neglected to mention hospital endorsements the clients were losing.

13. The licensee argues that he checked the box that said there would be no surrender penalties as he knew that the clients would be informed by their prior insurance companies of the penalties<sup>5</sup>. The law does not allow the licensee to rely on his clients obtaining information from other sources. It requires him to provide the correct information in the replacement form.

14. In sum, the licensee made numerous misrepresentations on the replacement forms at issue, and thus violated WAC 284-23-440(2)(a).

15. This conclusion is not based on the licensee's answering "no" to question no. 1 in the replacement form asking whether the Equilink I policy could have reduced benefits in later years. The OIC argues that this should have been answered "yes" because the participation rate could be reduced. However, Great American could only do this to future premiums purchases, and only after advance warning. Because the

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<sup>5</sup>In a couple cases, the clients did not have their policies on hand, so he did not know what the penalties would be. However, he certainly could have inferred there would be some penalty for early surrender of annuities purchased only a couple years earlier.



licensee was selling single premium policies, there is at least room for debate about whether the discussion about possibly reduced participation rates for future possible premiums would needlessly add confusion.

16. The conclusions in this decision about misrepresentations are not based on whether the licensee adequately explained the participation rate or other technical terms used in the Equilink I policy. Because the clients who testified were not sophisticated and some were quite confused, it is possible that at the time of the hearing they would not have understood or remembered those terms even if the licensee had explained them at length.

17. RCW 48.30.180 provides:

**"Twisting" prohibited.**

No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy.

The licensee induced his clients to surrender their existing annuities based on oral promises of interest rates of up to 16% and his assertion in the replacement forms that "all premiums earn interest". In fact, only 90% of the premiums earned interest, at only 3%, unless the policy were kept the entire 10-year term. As discussed above, each of the replacement forms contained other incorrect information. This conduct is "twisting" under RCW 48.30.180.

18. RCW 48.30.210 provides:

**Misrepresentation in application for insurance.**



A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked.

RCW 48.30.090 provides:

**Misrepresentation of policies.**

No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

The conduct discussed above also violated RCW 48.30.210 and RCW 48.30.090.

19. The licensee argues that if he made misrepresentations in the replacement form, that these were inadvertent. The undersigned does not accept this argument.

Certainly, it is possible that the licensee made some misrepresentations because he did not understand the Equilink I, and not because of an attempt to deceive. However, the overwhelming weight of the evidence establishes that the licensee had a scheme by which he both intended to deceive and did deceive his elderly clients for the purpose of selling insurance products.

E. Incompetence; Untrustworthiness; and Source of Injury and Loss.

20. RCW 48.17.530(1) provides in relevant part:

The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter . . . for any of the following causes:

\* \* \*



(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

21. The licensee previously had his license revoked for reasons very similar to those presented in this case. He has persisted in the very activities he was warned against, including failure to properly and timely identify himself as an insurance agent. He has used the "living trust" scheme despite concern expressed by the OIC. He has failed to fill out replacement forms correctly or give his clients information they need for informed purchases. The licensee is incompetent to sell insurance in the manner required by law.

22. The licensee will tell untruths when it suits his purpose, such as when he told Jeff Smith he had his license previously revoked for only a technical violation. His scheme to enter homes of elderly potential clients with an "AARP Report" flier, gain their confidence and then sell them annuities based on misrepresentations about the terms of the annuities, was deceptive. He was deceptive when he and his wife developed a scheme to enter the Moser home under false pretenses. The licensee made a misstatement in his request for hearing, when he stated that he reviewed "all" the policies with his clients. I conclude that the licensee is not trustworthy.

23. The licensee has been a source of injury and loss to the public. For example, Ms. LaBelle incurred surrender fees from her prior policy, even though Great American waived its surrender fees when she canceled her Equilink I annuities. Ms. Wilson canceled her Equilink I annuity after discovering that the licensee had misrepresented the surrender charge, but still lost money from cashing out her prior investment. The



Mosers ultimately kept their Equilink I annuities after "the investigator" (Ms. Strom) told them they had no choice. The licensee has caused injury and loss to his clients.

F. Remedy

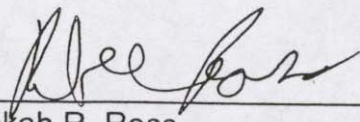
24. The licensee argues that license revocation is too harsh a penalty. He argues that a brief suspension or monetary fine would be more appropriate. The undersigned deems license revocation to be the only appropriate consequence of the licensee multiple violations of the Insurance Code. A lesser penalty might apply to an agent who needs direction and warning, but can be expected to be able to comply in the future. In addition to the number of violations of the Insurance Code, the following factors support the conclusion that revocation is appropriate: The licensee has persisted in schemes similar to those that resulted in his prior license revocation, and thus has shown that this behavior is not correctable even with the imposition of a severe sanction. The licensee is deceptive and seems to believe that he need not cooperate in OIC investigations he deems to be overzealous, and thus it would be difficult for the OIC to adequately monitor the licensee's future activities. There is a significant risk of harm to the public either from the licensee's lack of competence or his untrustworthiness.

**INITIAL ORDER**

It is hereby ordered that the Order Revoking License is AFFIRMED. The insurance license of Irvin Strom is HEREBY REVOKED.



Dated at Olympia, Washington, this 24th day of June, 2002.

  
\_\_\_\_\_  
Rebekah R. Ross  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE TO THE PARTIES

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a petition for review of an initial order. The petition for review shall be filed with the agency head within twenty (20) days of the date of service of the initial order. Copies of the petition must be served upon all other parties or their representatives at the time the petition is filed. The petition for review must specify the portions of the initial order to which exception is taken and must refer to the evidence of record which is relied upon to support the petition.

Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed. A petition for review or reply filed at the address of the Office of Administrative Hearings shall be deemed service upon the agency head. The petition and reply shall be consolidated with the hearing file for presentation to the Insurance Commissioner.



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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington, this 24<sup>th</sup> day of June, 2002  
*Renee Molins*  
Representative, Office of  
Administrative Hearings